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Remarks

Claims 1-17 are pending and have been rejected under 35 U.S.C. 103(a) as being unpatentable over Hansen et al in view of Hahn and the "Professional Baking" cookbook.

The present invention relates to bread-like products that can be easily prepared by the end user simply by baking a frozen, unproofed product. The product as presently described and claimed is a "biscuit swirl," which is a novel product having the organoleptic properties of a luxuriant roll, but with the ease in preparation of a freezer-to-oven product. The present product mimics the organoleptic properties of traditional products that historically are much more difficult to prepare, because the traditional product comprises a yeast leavening agent and dough structure that does not perform properly in convenience freezer-to-oven preparation conditions. See the background discussion at page 2 of the present specification.

The outstanding Office Action raises seven major lines of reasoning in continuing the outstanding rejection. These lines of reasoning and Applicants' response follow.

1. "It is not clear what applicant means by 'bread-like' or bread product."

It is believed that the record is very clear with respect to the distinctness of biscuit dough vis-à-vis bread dough. It is noted that the Patent Office has already acknowledged the distinction between bread dough and biscuit dough in this application, in the Advisory Action dated July 1, 2004.

As discussed previously, the difference between biscuit dough and bread dough is due generally to the degree of development of gluten in the dough (i.e., the gluten in a biscuit dough is generally described as underdeveloped, See page 4, lines 3-19 of the present specification). The degree of development of the dough is a function of both dough ingredients and mix time. A result of underdeveloped gluten in a biscuit dough is that biscuit dough is relatively more sticky and tends to break when stretched, whereas a bread dough is more extensible than a biscuit dough. Biscuit dough is a recognized material for use in certain environments, such as being served covered with gravy or being provided with a separate application of marmalade and the like. Further, biscuit

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dough is recognized in the art as being a very different material from conventional yeast doughs. See, for example, the excerpt from the McGee cooking text of record, which has a separate section in the "Other Dough Products" portion of the "Bread, Doughs, and Batters" chapter of the text headlined "Biscuits." (See McGee, Harold, "On Food and Cooking, The Science and Lore of the Kitchen," pages viii and 320). The McGee text describes a distinguishing feature of a biscuit dough is that a "biscuit dough is mixed only enough to incorporate all the ingredients without developing the gluten too much" (See the McGee text at page 320, second full paragraph). The difference between these doughs is readily apparent and understood by the skilled artisan. See also the discussion at page 86 of the "Professional Baking" Cookbook.

No new analysis has been presented in any Office Action since July 1, 2004 to support a reversal of this previous acknowledgement.

2. "It would have been obvious to one skilled in the art to prepare biscuit [for use in the products of Hanson] because the dough contains all the ingredients that are used to prepare biscuit."

This analysis does not support an assertion of obviousness, because it assumes that a biscuit dough is equivalent to a bread dough for all purposes because it has ingredients in common. This is like saying apples and oranges are interchangeable because they both are fruits made from carbohydrates, water, etc. While apples and oranges are in the same broad food group category, their properties when being placed in certain environments (for example, when making pies) are quite different. Similarly, a biscuit dough is a product that has a particular expected use due to the texture characteristics that are expected from its structural configuration (see the discussion above under point 1). There is no motivation to take such a product out of its ordinary environment and place it in the different environment to provide a frozen unproofed, unbaked biscuit swirl capable of being baked without an intermediate thawing or proofing step.

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3. Hanson discloses preparation of a laminated dough, and also non-laminated dough products.

Applicants' previous argument on the point that Hanson preferred laminated dough is not a statement that Hanson does not additionally discuss non-laminated doughs. The purpose of Applicants' discussion is to show that the preferred dough product of Hansen comprises a laminated dough, which takes advantage of physical separation of the dough by fat layers to provide even more rising of the dough in the cooking process. See column 11, lines 47-54. Following this logic, laminated doughs are expected to achieve the best performance in BSV in a freezer-to-oven dough product. Hanson therefore teaches away from the use of non-laminated dough in products where better BSV performance is desired. Non-laminated dough is an element of the present claims.

4. Applicant's statement regarding the challenge of preparing larger sized freezer to oven rolls "is not supported by factual evidence."

It is respectfully submitted that there is ample evidence in the present record regarding the challenge of making larger freezer to oven rolls. For example, Hansen discusses cinnamon roll configurations and issues related to such products at column 3, lines 41-54, and beginning at column 15, line 40. Hansen notes that small cinnamon rolls, sold as "Cini-mini" cinnamon rolls, can be made as a freezer-to-oven product, but only because the product is very small and the degree of expansion required to provide a suitable a small baked product is much less than that required for a larger baked product. See column 3, lines 40-54 and line 63 to column 4, line 9. This challenge is also recognized by present Applicants at page 9, lines 17-24. Additionally, it is submitted that it is a very logical and self-evident conclusion that frozen items of larger size would present greater challenges in thoroughly and evenly expanding and cooking from a frozen state in a freezer-to-oven context than smaller items.

The Office Action does not provide evidence or reasoning to contradict this art recognized finding.

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5. The finding that the instant product has a higher BSV than that of a roll prepared from a fully developed laminated dough “is not unexpected, because different product[s] ha[ve] different BSV[s].”

It is true that different products have different BSVs. However, one of the surprising discoveries of the present invention is that the non-laminated biscuit dough product of the present invention has a higher BSV than the fully developed laminated dough product, which is the opposite of the expectation that one would have had in view of the prior art.

First, one must recognize that a laminated dough provides a product having a very different organoleptic experience than that of a non-laminated product. The laminated product configuration takes advantage of physical separation of the dough by fat layers to provide exceptional rising properties. The resulting product has a configuration comprising large gaps between dough layers, and typically results in a flaky product such as Danishes and croissants. See Hansen at column 11, lines 51-54. One would expect that a laminated dough product would have a high BSV in comparison to a non-laminated product simply due to the additional gaps provided by physical separation of the dough by fat layers. It would therefore be expected that the BSV of laminated dough products would be higher than like non-laminated dough products. Surprisingly, it was shown in the comparison previously made of record in the declaration by inventor Leola Henry that the present non-laminated biscuit dough product exhibited superior BSV as compared to a laminated fully developed dough product.

6. “[I]t would have been obvious to use the dough to prepare a biscuit product if that [was] the type of product wanted.”

A basis for one of the surprises of the present invention is that people do not want to have biscuits due to their expectation of the taste and texture of biscuit products. A surprising aspect of the present invention is that the present novel product “biscuit swirl” has the organoleptic properties of a luxuriant roll, but with the ease in preparation of a freezer-to-oven product. Thus, there was no motivation to use a biscuit dough in the presently claimed context, because a biscuit was not the type of product that people

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wanted. Further, it was surprising that a biscuit dough in this context provided excellent BSV performance in addition to satisfying organoleptic properties.

7. "The Hahn reference is not relied upon for the teaching of a biscuit dough. It is used to show the filling and Hahn does teach using the filling with biscuits." "One would be motivated to use such filling because biscuit is commonly consumed with a filling material and Hahn teaches to use the filling with biscuits."

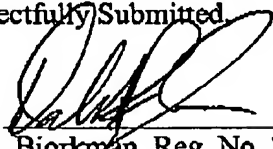
Hahn mentions biscuits in a list of products, and there is no teaching of how that filling is incorporated in a biscuit. Absent a teaching from any reference, one would have had no motivation to provide a filling at any location other than on top of the biscuit, and not in the configuration of a "biscuit swirl" as required in claim 1. The outstanding Office Action acknowledges that Hahn does not provide a teaching about biscuit dough. The focus of Hahn is on the nature of the filling material, not on product configuration. If one were to combine Hansen with Hahn, one would merely arrive at the cinnamon rolls already described in the examples of Hansen, but with an improved filling material.

Conclusion

It is respectfully submitted that the present claims are in condition for allowance. Early favorable notice to that effect is earnestly solicited. In the event that a phone conference between the Examiner and the Applicants' undersigned attorney would help resolve any remaining issues in the application, the Examiner is invited to contact the attorney at (651) 275-9811.

Respectfully Submitted

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